

Date of Decision : 16th March, 1996.

Criminal Miscellaneous Application No.1649 of 1983.

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For Approval and Signature

The Honourable Mr.Justice S.M. SONI

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.A.D. Shah, Advocate, for the Petitioner.

Mr.H.M. Mehta, Senior Central Government Standing Counsel, for the respondents.

Coram : S.M. SONI, J.

(16th March, 1996)

Oral Judgment :-

This is an application under Section 482 of the

Code of Criminal Procedure, 1973 ("Code", for short), challenging the order passed by the Chief Metropolitan Magistrate, below Exhibit 2 in Criminal Cases No.766 of 1983 and 799 of 1983, on 16th August, 1983.

The facts necessary to appreciate the contention of the parties are as under :-

That in view of some default in income tax under Income Tax Act, amounting to criminal offence, statement of petitioner was recorded by different Officers, who are respondents No.2 and 3 before this Court. Petitioner stated different facts pertaining to same incident and the query. The said statement of the petitioner was recorded under Section 131 of the Income Tax Act. Under the provisions of the Income Tax Act, in particular under Section 131, petitioner-accused was legally bound to state the truth and nothing but the truth. The statements of the accused were required to be recorded in view of statement of one Bipinchandra C. Soni. Said Bipinchandra C. Soni has stated that his uncle, i.e. the accused, (petitioner herein), had gone to Bombay by plane on Thursday or Friday, i.e. on 6th or 7th August, 1981 and returned on Saturday, by train. In view of this statement of Bipinchandra, statement of accused came to be recorded under Section 131. This statement of accused was recorded by one Mr.Girish Dave and Mr.B.R. Kaushik and before both the Officers, petitioner came out with different facts and, therefore, a complaint came to be filed under Sections 181 and 193 of the Indian Penal Code by both the Officers, separately. Process came to be issued in both these complaints. Accused then gave an application to hold that either of the complaints cannot be proceeded with in view of the provisions of Section 300 of the Code, and in the alternative, to stay the proceedings of one of the complaints. Learned Chief Metropolitan Magistrate held that neither of the complaints is hit by Section 300 of the Code and either of them cannot be cancelled. However, the learned Magistrate, in the order, suggested:-

"... In fact, the accused can avail of provisions in Criminal Procedure Code under which he can pray for trying both the complaints together; provided he feels that he is not likely to be prejudiced and provided that the Court also comes to the conclusion that he is not likely to be prejudiced by his being tried in one proceeding for separate offences...."

The order of the learned Magistrate, rejecting the application for either of the reliefs, is under challenge in this Application.

Heard learned counsel Mr.A.D. Shah for the petitioner and Mr.H.M. Mehta, Senior Standing Counsel of the Central Government. Learned counsel Mr.A.D. Shah does not press the contention raised under Section 300 of the Code, however requests this Court to direct the trial court to proceed with both the cases simultaneously and also permit him to move the trial court for a joint charge under proviso to Section 218 of the Code. There may be no difficulty in ordering simultaneous proceeding of the two cases and also if the learned Judge considers fit, to frame joint charge under proviso to Section 218 of the Code, if requested after hearing both the parties. In view of this, following order is passed :-

Application is dismissed. Rule is discharged. Interim relief stands vacated. However, the Chief Metropolitan Magistrate is directed that he shall proceed with Criminal Cases No.766 of 1983 and 799 of 1983 simultaneously and also may decide the application under proviso to Section 218 in accordance with law after hearing the parties and if he agrees with the same, he may proceed with the same in accordance with law.

(apj)